

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

FILED BY CLERK

FEB 27 2007

COURT OF APPEALS  
DIVISION TWO

THE STATE OF ARIZONA,

Respondent,

v.

FRANCIS JOSEPH FLAHERTY,

Petitioner.

)  
)  
) 2 CA-CR 2006-0349-PR  
) DEPARTMENT B  
)

MEMORANDUM DECISION

) Not for Publication  
) Rule 111, Rules of  
) the Supreme Court  
)  
)

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-44713

Honorable Jan E. Kearney, Judge

REVIEW GRANTED; RELIEF DENIED

Francis Joseph Flaherty

Yuma  
In Propria Persona

E S P I N O S A, Judge.

¶1 A jury found petitioner Francis Joseph Flaherty guilty of two counts each of armed robbery, first-degree burglary, and theft by control and one count each of aggravated robbery, kidnapping, and fleeing from a law enforcement vehicle. For those nine felony convictions, he was sentenced to prison terms totaling twenty-seven years. We affirmed the convictions and sentences on appeal and have twice upheld the denial of previous petitions for post-conviction relief Flaherty filed pursuant to Rule 32, Ariz. R. Crim. P., 17 A.R.S. *State v. Flaherty*, Nos. 2 CA-CR 94-0557, 2 CA-CR 96-0031-PR (consolidated)

(memorandum decision filed Nov. 14, 1996); *State v. Flaherty*, No. 2 CA-CR 01-0254-PR (memorandum decision filed Nov. 1, 2001).

¶2 This petition for review follows the trial court’s summary denial of Flaherty’s third petition for post-conviction relief. In that petition, Flaherty invoked Rule 32.1(g) in arguing that the Supreme Court’s decision in *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004), constituted a significant change in the law that entitled him to be resentenced. In a second issue, he asserted trial counsel had been ineffective in failing to investigate the validity of the prior felony convictions used to enhance his sentences.

¶3 The trial court denied relief summarily on the ground that Flaherty’s ineffective assistance claim was precluded under Rule 32.2(a) as having either been raised or waived in his previous post-conviction proceedings and, as to his *Blakely* claim, on the ground that *Blakely* does not apply to cases, like Flaherty’s, that were final before *Blakely* was decided. See *State v. Febles*, 210 Ariz. 589, ¶ 17, 115 P.3d 629, 635 (App. 2005); *State v. Cleere*, 210 Ariz. 212, n.2, 109 P.3d 107, 108 n.2 (App. 2005).

¶4 We will not disturb a trial court’s ruling on a petition for post-conviction relief unless the court has clearly abused its discretion. *State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990). Finding no such abuse here, we grant the petition for review but deny relief.

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PHILIP G. ESPINOSA, Judge

CONCURRING:

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PETER J. ECKERSTROM, Presiding Judge

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J. WILLIAM BRAMMER, JR., Judge